

UNITED STATES BANKRUPTCY COURT  
for the Eastern District of Pennsylvania

In re	:	Case No. 11 - 18010
Fawwaz F. Beyha	:	(Chapter 11)
Debtor.	:	
	:	Hon. Jean K. FitzSimon
	:	

MEMORANDUM OF LAW IN SUPPORT OF  
DEBTOR’S MOTION TO REOPEN CASE

On April 24, 1997, Debtor purchased real property known as 1900 South 19<sup>th</sup> Street in the City and County of Philadelphia, PA 19145 (“the Property”). On May 21, 1997, he obtained a mortgage from Public Savings Bank (“Lava”) in the amount of \$15,000.00.<sup>1</sup> On August 12, 1997, he refinanced this mortgage<sup>2</sup> with a new mortgage from Valley Pine Mortgage (“Valley”) in the amount of \$33,600.00,<sup>3</sup> which was later assigned on August 29, 1997<sup>4</sup> to American General Finance Services, a/k/a, Springleaf Financial Services, Inc. (“Spring”). On October 31, 2006, he refinanced this loan with Delta Funding Corporation, which was assigned to HSBC Bank, and later assigned to Ocwen Loan Servicing, LLC (“Ocwen”). Conestoga Title Insurance Company

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<sup>1</sup> Recorded on July 17, 1997, Document No. 48086652.

<sup>2</sup> Lava marked satisfied on August 14, 1997 and recorded on January 27, 1998, Document No. 48521846.

<sup>3</sup> Recorded on October 6, 1997, Document No. 48126950.

<sup>4</sup> Recorded on October 4, 1998, Document No. 48666303.

(“Conestoga”) provided title insurance for this October 31, 2006 transaction.<sup>5</sup>

On October 16, 2011, Debtor commenced this case by filing the above-captioned voluntary petition for relief under Chapter 13. It was converted to Chapter 11 on May 23, 2012. This petition included debts owed to Springleaf Financial Services, Inc., f/k/a, American General Finance Services (“Spring”)<sup>6</sup> on Debtor’s schedules and included Spring on Debtor’s Matrix for its August 12, 1997 mortgage on the Property. This petition also included debts owed to Ocwen<sup>7</sup> on Debtor’s schedules and included Ocwen on Debtor’s Matrix for its October 31, 2006 mortgage on the Property.

It appears that Conestoga either mishandled settlement according to required procedures or it failed to exercise due diligence to conduct a proper property search. Notwithstanding this error, Conestoga and its present attorney knew of the existence of this bankruptcy filing as of March 14, 2012.<sup>8</sup> Sometime thereafter, Conestoga satisfied Spring’s mortgage.<sup>9</sup> Rather than recording a Satisfaction, Conestoga fabricated a bogus Subordination Agreement which did not include Debtor, after which it did not provide a copy to Debtor or to this Court.<sup>10</sup> Not only did Conestoga never send Debtor a bill, this

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<sup>5</sup> Encumbrances Insurance is designed to save the insured harmless from any loss through defects, liens, or encumbrances that may affect or burden his title when he takes it. *Fifth Mut. Bldg. Socy. of Manayunk’s Appeal*, 317 Pa. 161, 164-65, 176 A. 494, 495 (1935).

<sup>6</sup> P.O.C. # 16.

<sup>7</sup> P.O.C. # 4.

<sup>8</sup> See, attached March 14, 2012 letter to the Title Curative Manager.

<sup>9</sup> See, attached August 28, 2012 satisfaction check.

<sup>10</sup> Rule 3001(e) of the Federal Rules of Bankruptcy Procedure required Conestoga to notify this Court of this alleged transferred claim.

deception may have prevented Debtor from completely exercising his lien stripping options pursuant to 11 U.S.C. § 1123(a)(5)(E) against this August 12, 1997 mortgage.

Debtor requests that this Court declare this Subordination Agreement as null, void, inoperative and not supported by any consideration. Conestoga's failure to satisfy Spring's mortgage following the closing of the October 31, 2006 Delta Funding refinancing constituted an agent error.<sup>11</sup> As a direct and proximate result of Conestoga's failure to conduct a diligent search or to satisfy the August 12, 1997 Spring mortgage, Debtor has been inhibited from selling his property and has incurred economic and noneconomic damages. These economic and noneconomic damages are the natural and ordinary damages that result from an agent's error, were reasonably foreseeable, and were with the contemplation of the parties at the time that the title insurance was issued.

Conestoga failed to provide Debtor with professional services in 2006. Then in 2012, Conestoga chose to disregard Debtor's bankruptcy and created a bogus and hidden claim against Debtor. Therefore, Debtor seeks leave from this Court in order to litigate this violation of his Discharge Injunction pursuant to *Taggart v. Lorenzen*, 139 S. Ct. 1795, 204 L. Ed. 2d 129 (June 3, 2019).

Respectfully submitted,

/s/ Ronald G. McNeil  
Ronald G. McNeil, Esquire  
Attorney for Debtor  
DATE: December 4, 2019

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<sup>11</sup> "Title insurance is the business of insuring the record title of real property for persons with some interest in the estate, including owners, occupiers, and lenders." *F.T.C. v. Ticor Title Ins. Co.*, 504 U.S. 621, 625 (1992).



March 14, 2012

Via email: JStears@udren.com

Jonathan Stears  
Title Curative Manager  
Udren Law Offices, P.C.  
111 Woodcrest Road, Suite 200  
Cherry Hill, NJ 08003

**Re: Borrower: Fawwaz Beyha a/k/a Vance T. Rhone**  
**Property: 1900 South 19<sup>th</sup> Street, Philadelphia, PA**  
**Policy No.: 490471**  
**Claim No.: 2961**  
**Bankruptcy Case No. 11-18010**  
**Your File No.: 11100743-3**

Dear Mr. Stears:

This letter is in response to the tender of your defense by Conestoga Title Insurance Company (the Company) in the above-referenced action. The Company hereby retains Mark C. Clemm, Esquire to represent your client in respect to the assertion of a title claim of intervening lien in the borrower's bankruptcy filed to case no. 11-18010 of the Eastern District of Pennsylvania. The Company does not by this letter consent to pay attorney's fees in representing your client except as stated herein, including the prosecution of any separate complaints or cross-complaints which may be available to you in this action. The Company has not retained Attorney Clemm regarding questions or issues concerning your coverage under the title insurance policy.

Attorney Clemm's contact information is as follows:

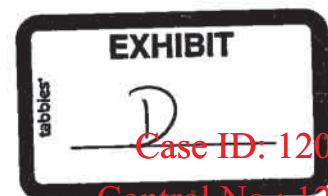
Mark C. Clemm, Esquire  
Morris and Clemm, P.C.  
527 Plymouth Road, Suite 416  
Plymouth Meeting, PA 19462  
(610) 825-0500  
Fax (610) 834-1776  
Email: mclemm@morriscl Emm.com

We ask your cooperation should Attorney Clemm, his associates and staff.

This defense is accepted subject to a reservation of rights; Conestoga Title Insurance Co. provided a Title Insurance Loan Policy, policy number 00490471, to Delta Funding Corporation. We previously advised you in our letter of March 7, 2012, in which we advised you that after an initial review of this claim, please be advised we need proof that you represent our Insured as defined by the policy (see below).

We cannot continue our investigation without documentation proving that your Client is our Insured. The **ALTA Loan Policy 06-17-06** defines Insured and Indebtedness as follows:

137-139 EAST KING STREET, LANCASTER, PA 17602  
(717) 299-4805 (800) 732-3555 Fax: (717) 299-6994



Case ID: 120802740  
Control No.: 12083508

SPRINGLEAF	SPRINGLEAF FINANCIAL		Conestoga Title Insurance Co.			9/28/2012
Ref Nbr	Invoice Nbr	Inv Date	Invoice Amount	Amount Paid	Disc Taken	Net Check Amt
035108	Claim 2961	09/21/12	42,102.93	42,102.93	0.00	42,102.93

002563

ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH MICROPRINTED BORDER



Conestoga Title Insurance Co.  
Claims Account  
137 East King Street  
Lancaster, PA 17602

Union Community Bank

60-7610/313

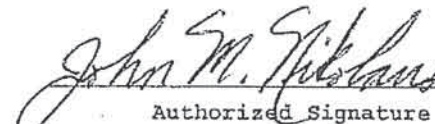
Check # 002563

Check Date  
9/28/2012

Check Amount  
\*\*\*\*\*\$42,102.93

Forty-Two Thousand One Hundred Two and 93/100----- Dollars

PAY TO THE ORDER OF  
SPRINGLEAF FINANCIAL  
519 BALTIMORE PIKE  
SPRINGFIELD, PA 19064-3811

  
Authorized Signature

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK - TOUCH OR PRESS HERE - RED IMAGE DISAPPEARS WITH HEAT.

⑈002563⑈ ⑆ 6101 ⑆ ⑈ 579 ⑈



UNITED STATES BANKRUPTCY COURT  
for the Eastern District of Pennsylvania

In re :  
Fawwaz F. Beyha : Case No. 11 - 18010  
Debtor. : (Chapter 11)  
: Hon. Jean K. FitzSimon  
:

CERTIFICATE OF SERVICE

Pursuant to Local Rule 9014-3(g) of the Federal Rules of Bankruptcy Procedure, I, Ronald G. McNeil, Esquire, certify that a true and correct copy of Debtor's Memorandum of Law in Support of Debtor's Motion to Reopen Case was served via electronic means, via hand delivery, and/or via first class postage prepaid, properly franked upon the following:

Conestoga Title Insurance Company  
c/o Clemm & Associates, LLC  
ATTN: Mark C. Clemm, Esquire  
488 Norristown Road, Suite 140  
Blue Bell, PA 19422

Springleaf Financial Services of PA, Inc., f/k/a,  
American General Finance Services  
c/o Fox & Fox  
ATTN: Benjamin E. Witmer, Esquire  
One Montgomery Plaza, Suite 706  
Norristown, PA 19401-4825

Ocwen Loan Servicing, LLC  
c/o Phelan, Hallinan & Schmieg, LLP  
ATTN: Sherri J. Smith, Esquire  
One Penn Center at Suburban Station  
1617 J.F.K. Blvd, Suite 1400  
Philadelphia, PA 19103-1814

Office of the U.S. Trustee  
833 Chestnut Street, Suite 500  
Philadelphia, PA 19107-4414

/s/ Ronald G. McNeil  
Ronald G. McNeil, Esquire  
Attorney for Debtor  
DATE: December 5, 2019